

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00152/1998

Pronounced on : 08.01.2020
(Reserved on : 19.12.2019)

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

...

Ravinder Kumar son of Shri Mangi Lal, aged about 42 years, resident of Masooria Colony, UIT, D-4, Jodhpur, at present employed on the post of Senior Clerk in Diesel Shed Bhagat-ki-Kothi, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.
3. Shri Ram Kishan, Assistant Supdt. Carriage and Wagon Depot, Bhagat-ki-Kothi, Jodhpur, Northern Railway.
4. Shri Gorakh Ram, Head Clerk, Loco Shed, Jodhpur and Northern Raiwlay.
5. Shri Ram Vilas, Head Clerk, Diesel Shed, Bhagat-ki-Kothi, Jodhpur, Northern Railway.

RESPONDENTS

BY ADVOCATE: Mr. Salil Trivedi for R1 & R2
 None for R3 to R5.

ORDER

...

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "(i) *That the impugned orders dated 24.07.1997/05.08.1997, Annexure A1, order dated 12.09.1997, Annexure A2, passed by the 2nd respondent, rejecting the claim of applicant and not allowing his due seniority/promotion at par with his next junior, may be declared illegal and the respondents no.1 and 2 may be directed to assign the seniority to the applicant above 3rd respondent and allow all consequential benefits including promotions at par with his junior with amount arrears of difference of pay thereof.*

IN THE ALTERNATIVE:

The respondent no.1 and 2, may be directed to consider the case of applicant for further promotions at par with his junior respondent no.4 and 5 and allow all consequential benefits including the amount arrears of difference of pay thereof.

- "(ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."*

2. The present O.A. has been made against the impugned orders dated 24.07.1997/05.08.1997, Annexure A1, and order dated 12.09.1997, Annexure A2. Earlier vide order dated 20.09.2011, the matter was decided by this Tribunal which was remanded back from the Hon'ble High Court of Rajasthan, Jodhpur. The Hon'ble High Court while setting aside the order of this Tribunal, vide order dated 09.11.2017, which is observed as under:-

"Disposed of the writ petition setting aside the impugned order dated 20.09.2011 and restore the Original Application filed by the petitioner with direction that the same shall be decided by the Tribunal after considering the pleadings of the parties."

3. Thereafter, the matter was listed before this Tribunal on 07.12.2017 for arguments and finally it was heard on 19.12.2019 and the matter was reserved for orders.

4. The brief facts of the case as narrated by the applicant are that the applicant was initially appointed to the post of Khallasi on 15.01.1974 at Loco Shed, Jodhpur in Northern Railways and he belongs to Scheduled Category. A notice was issued vide letter dated 11.09.1978, vide which seven posts of Senior Clerk scale Rs.330-560 and one post of Clerk scale Rs.260-400, were downgraded to the post of Junior Clerk in Scale of Rs.225-308 for a period of three months only with further mention that it would come to an end as soon as the senior clerk become available (Annexure A3). The respondents issued letter dated 07.02.1979 for filling up the post of Clerk in scale of Rs.260-400. The applicant was allowed to appear in the said selection and was passed the same and given promotion to the post of Junior Clerk in scale of Rs.225-308, against the aforesaid down-graded posts, vide letter dated 23.07.1979 (Annexure A5). The applicant was allowed due fixation of pay from the date of promotion i.e. 23.07.1979.

5. The applicant appeared in the written test and Viva Voce Test and passed the same vide letter dated 03.03.1982, his name shown at Sl.No.53. He was ordered to be regularised on the post of Clerk in scale of Rs.260-400 vide letter dated 05.08.1988 in view of judgment of this Tribunal (Annexure A8). There was protest against the aforesaid order of regularisation and another order in the same matter was passed vide letter dated 08.05.1990, fixing the date of regularisation as 21.09.1983

(Annexure A9). Thereafter he also passed the suitability test and was given promotion to the post of Senior Clerk vide letter dated 05.09.1991 (Annexure A10). The applicant challenged the orders of his regularisation/promotion to the post of senior clerk to the extent of dates with all consequential benefits at par with his next junior respondent no.4, in OA No.325/1992, before this Tribunal, which was disposed of vide order dated 29.04.1997, with a direction to the respondents to give him promotion from the date his junior was given promotion and grant him further promotion as senior clerk at par with his next junior (Annexure A11).

6. It is further stated that 2nd respondent was pleased to issue an order on 24.07.1997/05.08.1997. It has been said to be in compliance of the judgment of this Tribunal. By this order, the second part of the order is tried to be complied and the date of applicant's promotion to the post of senior clerk has been changed from 05.09.1991 to 21.11.1989 without any details (Annexure A1). However, until the first part of the order is complied with, the second part being consequential, could not have been complied with. The applicant submitted another representation on 03.09.1997, apprising the 2nd respondent that there were certain other juniors who were allowed further promotions to the post of head clerk also (Annexure A13), but claim of the applicant has been rejected vide letter dated 12.09.1997 (Annexure A2). His position is said to have been below Sl.No.17 and above 18 on the said letter. Therefore, his case cannot be considered at par with respondent no.3. But respondents no.4 & 5 who are admittedly junior as per the respondent ibid letter, have been allowed further promotion to the post of Head Clerk, but nothing has been done to consider applicant's

promotion to the said post. The post of Head Clerk is a non-selection post and is filled on the basis of seniority subject to rejection of unfit. The applicant has nothing adverse against him so as to obstruct his promotion as head clerk. The judgment was completely side tracked by passing aforesaid orders.

7. The applicant had to file a contempt petition in the matter but the same has been dismissed on 21.04.1998 for the reasons that order of changing the date of promotion of applicant to the post of senior clerk has been changed (Annexure A14). The applicant is faced with humiliation and frustration for none of his faults and his service career is being jeopardized. Hence this OA.

8. In the written statement filed on behalf of respondents no.1 & 2, it has been stated that the applicant was initially appointed as a substitute Khalasi in Grade Rs.70-85 and posted under Loco Foreman, Jodhpur vide letter dated 14.01.1974. Subsequently, he was appointed as temporary Fitter Khalasi in Grade Rs.70-85 vide letter dated 28.05.1976. Thereafter the applicant was promoted to the post of Junior Clerk/Store Issuer vide letter dated 23.07.1979. Further in pursuance of the GM letter dated 28.08.1980, he was extended the benefit of pay fixation in grade Rs.260-400 as Clerk w.e.f. 23.07.1979 vide letter dated 29.12.1980. Thereafter the applicant was reverted from the post of adhoc clerk grade Rs.260-400/950-1500 (RPS) to his substantive post as Fitter Khalasi grade Rs.196-232/750-940 (PS) vide letter dated 01.05.1987. He was again promoted as Clerk grade Rs.950-1500 (RPS) purely on adhoc basis vide letter dated 18.12.1987.

9. It is further stated that the selection was ultimately finalized vide letter dated 29.04.1982, according to this, the name of the applicant could not be placed on the panel to the post of Clerk in the grade of Rs.260-400. Hence, the applicant was extended the benefit of promotion to the post of Junior Clerk grade Rs225-308 w.e.f. 23.07.1979 is not correct. It is admitted that the applicant was extended the benefit of pay fixation in grade Rs.260-400 as Clerk w.e.f. 23.07.1979 subsequently in accordance with the GM letter dated 28.08.1980. The applicant was subjected to the written test and viva-voce test but the applicant could not find place in the panel. Thereafter, upon the implementation of the C.A.T. order dated 01.01.1988 passed in OA No.185/1987, the applicant was regularised as Clerk in grade Rs.260-400/950-1500 with immediate effect vide letter dated 05.08.1988. In pursuance of GM letter dated 06.04.1989, the store issuers who have completed 3 years of service after the date of original selection i.e. 21.09.1980 may be regularised as Clerk in grade Rs.260-400 w.e.f. 21.09.1983 accordingly the applicant was regularized to the post of Clerk w.e.f. 21.09.1983 instead of 05.08.1988. His seniority was determined in grade of Rs.260-400 as clerk w.e.f. 21.09.1983 instead of 05.08.1988 and on the basis of the revised seniority position he was subjected to the written test to the post of Senior Clerk grade Rs.1200-2040 on 31.05.1991 and on being declared for the same on 08.06.1991 he was promoted to the post of Senior Clerk grade Rs.1200-2040 vide letter dated 05.09.1991.

10. Aggrieved by the order dated 05.08.1990 in respect of the applicant's regularisation to the post of clerk grade Rs.260-400 w.e.f. 21.09.1983 and order dated 05.09.1991 in respect of his promotion to

the post of Senior Clerk, the applicant preferred OA No.325/1992 before this Tribunal, claiming his regularisation in grade Rs.260-400 as Clerk w.e.f. 23.07.1979 instead of 21.09.1983 and with all consequential benefits at par with Shri Ram Kishan (SC). The OA was decided on 29.04.1997. In compliance of the direction of the Tribunal, the representation dated 15.05.1997 submitted by the applicant was examined and he was extended the benefit of pay fixation in grade Rs.1200-2040 as senior clerk w.e.f. 21.11.1989 on proforma basis instead of 05.09.1991 at par with his immediate junior Shri Rajendra Kumar (ST), senior clerk Rs.1200-2040 vide letter dated 24.07.1997/05.08.1997 as he was due for the same as a result of his regularisation in grade Rs.260-400 as clerk w.e.f. 21.09.1983 instead of 05.08.1988. Therefore, the present OA filed by the applicant is not maintainable in as much as the relief claimed in the OA is identical to the relief claimed by the applicant in his earlier OA. It is also stated that the direction given by the Tribunal in OA preferred by the applicant was fully complied with, but the applicant preferred a contempt petition before this Tribunal challenging the order Annexure A1 dated 24.07.1997 claiming therein that the order of this Tribunal is not complied with. The CP has been dismissed by the Tribunal on 21.04.1998 (Annexure A14), therefore, the applicant simply cannot challenge the order Annexure A1, now and the OA deserves to be quashed.

11. It is further stated that the representation of the applicant was considered in the light of the Tribunal's direction and it was found that the applicant was not due for further promotion at par with Shri Ram Kishan (SC) as he was substantively senior to the applicant who was

inducted in grade Rs.260-400 as clerk w.e.f. 10.10.1979 whereas the applicant has been extended the benefit of regularization in grade Rs.260-400 as clerk w.e.f. 21.09.1983. The applicant was entitled for promotion to the post of senior clerk Rs.1200-2040 w.e.f. 21.11.1989 at par with his immediate junior Shri Rajendra Kumar (ST). In view of the directions issued by this Tribunal has already been complied within toto and in its true spirit, therefore, the Tribunal's order was not complied with is not correct and the applicant simply cannot maintain the present OA.

12. After the order Annexure A1 was passed, the applicant submitted another representation dated 09.09.1997 claiming further promotion with all consequential benefits at par with his certain juniors, the same was disposed of vide letter at Annexure A2 whereby his demand for extending the benefit of further promotion at par with Shri Ram Kishan was rejected for the reason that Shri Ram Kishan was substantively senior to the applicant. It is evident from Annexure A12 that the names of respondents no.4 and 5 was not mentioned by the applicant in the representation. The said representation was decided on the basis of documentary evidence available in the office and the applicant was extended the benefit of promotion vide order Annexure A1, now the applicant in this present OA is seeking the promotion at par with respondents no.4 & 5. The applicant simply cannot claim any relief against respondents no.4 & 5 by his own conduct. The applicant is stopped from seeking this relief. Besides that the claim of the applicant for extending promotion at par with respondents no.4 & 5 is not considerable and tenable for the reason that two senior SC staff like Prabhu Dayal and Prem Chand were simultaneously regularised in grade

Rs.260-400 as clerk w.e.f. 21.09.1983 and they are yet working in grade Rs.1200-2040 as senior clerk. Hence, these two senior SC staff, the candidature of the applicant cannot be considered for further promotion above these two SC staff.

13. Aggrieved by the order Annexure A1, the applicant preferred CP before this Tribunal and the same was dismissed on 21.04.1998 vide Annexure A4 which is self explanatory then in such a situation the applicant preferred earlier OA claiming the same relief which was granted by the respondents in compliance of the Tribunal's direction given while deciding the earlier OA vide Annexure A1. Aggrieved by this, the applicant preferred CP which too was dismissed. Now, the applicant is challenging the Annexure A1 again seeking the same relief is not maintainable.

14. Heard Shri J.K. Mishra, learned counsel for the applicant and Shri Salil Trivedi, learned counsel for respondents no.1 & 2 and perused the pleadings available on record.

15. Learned counsel for the applicant submitted a copy of written submissions, wherein the factual aspect of the written submissions, it has been stated that the applicant was initially appointed to the post of Khalasi on 15.01.1974 in Loco Shed at Jodhpur. Seven posts of Senior Clerk and one post of Clerk were downgraded to Junior Clerk in pay scale of Rs.225-308 for a period of three months vide letter dated 11.09.1978. A test was organized for filling up the downgraded posts and the applicant applied for the same. He qualified in the test and enjoyed promotion from 23.07.1979 as clerk. The downgraded posts were restored in the pay scale of Rs.260-400 on 10.11.1980. He was

again subjected to selection test for the same post on 27.09.1980 and 20.12.1980. He qualified in the written test. The applicant and other similarly situated persons were sought to be reverted on 01.05.1987 and they successfully challenged the reversion orders vide OA 185/1987. It was observed that they could not be said to be working on adhoc basis and were directed to be continued. The stand of the respondents in their reply that the applicant was reverted is wrong since the very reversion was quashed in the said i.e. OA 185/1987.

16. An order came to be passed purporting to regularise the applicant and others vide letter dated 27.09.1983 in the pay scale of Rs.950-1500. The applicant preferred OA No.325/1992 and prayed for treating him as clerk from the date of his initial promotion i.e. 23.07.1979 as clerk and for promotion to the post of senior clerk at par with his next junior Shri Rama Kishan i.e. respondent no.3 who was admittedly appointed as clerk on 10.10.1979 later than applicant. The same came to be disposed off vide order dated 29.04.1997 (Annexure A11) with a direction to consider his representation and in case his claim was established, he shall be given regular promotion from the date of his junior and also promoted to the post of Senior Clerk from the date of his immediate junior was promoted. The applicant submitted a detailed representation and the same was disposed of vide order dated 24.07.1997/05.08.1997 (Annexure A1) whereby he was ordered to be treated as senior clerk w.e.f. 21.11.1989 instead of 05.09.1991. The question of obeying the first part of the order did not arise i.e. parity with his next junior. The applicant was not even allowed the benefits at par with his further admittedly juniors i.e. respondents no.4 & 5, who were shown as junior to him at Sl.No.22 and

25 (applicant's name at Sl.No.18) in the impugned seniority list Annexure A2 itself but they were promoted to the post of Head Clerk, ignoring the candidature of applicant who was kept on the lower post of Senior Clerk.

17. The Tribunal was pleased to partly allow the OA vide judgment dated 19.12.2001 in regard to his claim regarding parity with Gorakh Ram but rejected the claim in regard to Rama Kishan on the ground of delay and not decided on merits. The matter was carried to the Hon'ble High Court in DB CWP No.3899/2002 and the said order came to be set aside and the OA was ordered to be restored. The OA was restored accordingly. The case was heard afresh but instead of examining and adjudicating the case on merits as per direction of the Hon'ble High Court, the OA was dismissed on the ground of res-judicata vide order dated 20.09.2011, by imposing heavy cost of Rs.35000/- on the applicant and Rs.50,000/- on the respondents. The matter had to be carried again to the Hon'ble High Court by filing DB CWP No.3004/2012 which was disposed of by setting aside the said order with a direction to decide the OA on merits.

18. Learned counsel for the respondents submitted a copy of written submissions, wherein it has been stated that the applicant challenging the order dated 24.07.1997 (Annexure A1) and order dated 12.09.1997 (Annexure A2) rejecting the claim of the applicant and not allowing seniority at par with his next junior and claim of seniority above respondent no.3 Ram Kishan. The respondents in their reply denied the claim raised by the applicant. At first instance this Tribunal decided the OA on 19.12.2001 whereby the OA was dismissed qua respondent no.3

Ram Kishan on the ground of limitation and allowed the OA qua respondent no.4 & 5 Gorakhram and Rambilas respectively. Aggrieved of the order dated 19.12.2001, two writ petitions were preferred before the Hon'ble High Court i.e. one by original applicant bearing No.3088/2002 and one by the respondents bearing No.3899/2002. These two writ petitions were decided by the Hon'ble High Court vide its order dated 01.02.2011 and the order passed by this Tribunal was set aside and the matter was remanded to the Tribunal for fresh adjudication.

19. After the matter was remanded back, this Tribunal heard the matter again and decided the same vide its order dated 20.09.2011, whereby the OA was dismissed with cost of Rs.35000/- upon the applicant and also a cost of Rs.50000/- was imposed against the respondents. Against the said order dated 20.09.2011, a writ petition was preferred before the Hon'ble High Court by the original applicant bearing No.3004/2012. During the pendency of the said writ petition, respondent no.4 Gorakhram died and as such his name was deleted from the array of parties. The applicant-Ravinder Kumar also stood retired on 30.11.2014. The writ petition was decided by the Hon'ble High Court vide its order dated 09.11.2017 and while setting aside the order passed this Tribunal, the matter was again remanded back for fresh adjudication keeping in view the earlier decision of the Hon'ble High Court dated 01.02.2011.

20. It is also stated that the precise controversy as has been raised by the applicant and claimed relief is not tenable in view of the fact that the applicant after undergoing the selection for the post of Clerk in pay

scale of Rs.225-308 promoted as Clerk in pay scale of Rs.225-308 from Class IV from the post of Khalasi on 23.09.1979. Further the applicant appeared in selection for the post of Clerk in pay scale of Rs.260-400 for which the written test was held but he could not find his place in the final panel of the selected candidates for the post of Clerk in pay scale of Rs.260-400. Thereafter, the applicant alongwith other employees who failed to find their place in the panel approached the administration through Union seeking regularisation their services as Clerk in pay scale of Rs.260-400 and after deliberation it was decided that the Store Issuer/Clerk who could not find place in the panel and are officiating on adhoc basis may be regularised with effect from the date they have completed three years from the date of their original selection i.e. 21.09.1980 and as such while implementing the said decision the services of the applicant was regularized as Clerk in pay scale of Rs.260-400 w.e.f. 21.09.1983, whereas respondent no.3 Ram Kishan was selected for the post of Clerk in the pay scale of Rs.260-400 on regular basis way back on 10.10.1979 and hence no claim of seniority over and above Ram Kishan can be entertained.

21. The applicant rightly extended the benefit of fixation of pay in pay scale of Rs.1200-2040 as Sr. Clerk w.e.f 21.11.1989 on proforma basis instead of 05.09.1991 at par with his immediate junior Sh. Rajendra Kumar vide letter dated 24.07.1997/05.08.1997 (Annexure A1). The claim raised by the applicant against respondents no.4 & 5 is also not sustainable in view the fact that this Tribunal while deciding the earlier OA No.325/1992 filed by the applicant decided on 29.04.1997 directing the applicant to submit a representation within one month indicating the name of juniors who have been given regular promotion in pay scale of

Rs.260-400 and the respondents were directed to consider the representation vide Annexure A2, the names of respondents no.4 & 5 were not mentioned as juniors. It is also stated that the claim of the applicant for extending promotion at par with respondents no.4 & 5 is not considerable and tenable for the reason that admittedly two seniors SC staff i.e. Prabhudayal and Premchand who also simultaneously regularised in pay scale of Rs.260-400 as Clerk w.e.f. 21.09.1983 are senior to the applicant and avoiding two seniors were SC candidates, the candidature of the applicant cannot be considered for further promotion above these two SC staff. In view of the submissions, there is no merit in the OA and the same is deserves to be dismissed.

22. As detailed above, the matter has been remanded back by the Hon'ble High Court in DB CWP No.3899/2002 the Tribunal's order partly allowing the OA with reference to claim of the applicant for parity with Shri Gorakhram was accepted; however, the claim in regard to applicant's parity with Shri Ramkishan was rejected on the grounds of delay and not decided on merit. The Hon'ble High Court vide their judgment in DB CWP No.3899/2002 set aside this order and the OA was restored. The OA was restored accordingly. The case was heard afresh but instead of examining and adjudicating the case on merits as per direction of the Hon'ble High Court, the OA was dismissed on the ground of res-judicata vide order dated 20.09.2011, by imposing heavy cost of Rs.35000/- on the applicant and Rs.50,000/- on the respondents. The matter had to be carried again to the Hon'ble High Court by filing DB CWP No.3004/2012 which was disposed of by setting aside the said order with a direction to decide the OA on merits.

23. Accordingly the matter was now examined on merits based on the arguments advanced by the learned counsels and the documents / pleadings as available on record.

24. During the course of hearing, learned counsel for the applicant traced the history of the case and the various orders/judgments given in the matter by this Tribunal as well as the Hon'ble High Court. Since it is a matter which has been remanded back by the Hon'ble High Court on two occasions, learned counsel for the applicant has provided written submission in the matter for greater clarity. It is the case of the applicant that the applicant submitted a detailed representation and the same was disposed of vide order dated 24.07.1997/05.08.1997 (Annexure A1) whereby he was ordered to be treated as senior clerk from 21.11.1989 instead of 05.09.1991. They even did not say a word about parity with said Shri Rama Kishan respondent no.3. The question of obeying the first part of the order did not arise i.e. parity with his next junior. The applicant was not even allowed the benefits at par with his further admittedly juniors i.e. respondents no.4 & 5, who were shown as junior to him at Sl.No.22 and 25 (applicant's name at Sl.No.18) in the impugned seniority list Annexure A2, itself, but they were promoted to the post of Head Clerk, ignoring the candidature of applicant who was kept on the lower post of Senior Clerk.

25. It was the case of the learned counsel for the applicant that the applicant passed the requisite selection for the post of Clerk and his promotion to the post of Clerk was taken as on regular basis as it could not be said to be adhoc and the reversion order was set aside and he continued on the same uninterruptedly. This position emanate from the

observation, analysis and finding of this Tribunal para 10 of the judgment passed in case of Budhi Ram & Ors. (applicant was one of them) Vs. Union of India and others, decided on 01.01.1988. The relevant part of the same is reproduced as under:-

"....It can however be safely stated on the basis of ex-P7 and on the basis of fairly long period regarded as merely adhoc appointee whose services could be terminated at the whims the employer. It is significant to mention that there is not even inkling that the applicants who had been restored original grade of Rs.260-400 were mere adhoc appointee or that their appointment was purely temporary terminable at any time without assigning any reason. It may also be added treating employees who have been working against certain posts for a long period like 7/8 years as adhoc employee is against the dictates of justice and fair play which the government as a model employer is expected to observe qua its employees."

Thus, the applicant is entitled to parity with his next junior and all the benefits granted to his junior.

26. Per contra, learned counsel for the respondents drew our attention to the Rule 18 of D&AR, 1968 on the matter of reversion. Full Bench of CAT has held that all Class IV Railway servant, who are holding adhoc posts in Class III are to be given several opportunities to qualify and are to be reverted if they do not qualify even after repeated opportunity. Learned counsel for the respondents drew our attention to Annexure A11 OA 325/19992 wherein the applicant had challenged the order dated 08.05.19990 and 05.09.1991 (Annexure A9 & A10). Respondents counsel made out the case that the regularization of the applicant was done on the basis of a representation made by the Railway Union. He also stated that applicant was aware that he was not a regular employee but only an adhoc and also that he was unable to clear the selection test.

27. The limited issue for our consideration is to establish the merits of the case and adjudicate on the claim of the applicant for allowing his seniority / promotion at par with his next junior. This Hon'ble Tribunal was pleased to partly allow the OA vide judgment dated 19.12.2001 in regard to his claim regarding parity with Gorakh Ram but rejected the claim in regard to Rama Kishan on the ground of delay and not decided on merits. The matter was carried to the Hon'ble High Court in DB CWP No.3899/2002 and the said order came to be set aside and the OA was ordered to be restored.

28. Learned counsel for the respondents have also provided a copy of written submissions wherein it has been stated that the applicant along with other employees who failed to find their place in the panel approached the administration through union seeking regularization their services as Clerk in pay scale of Rs.260-400 and after deliberation it was decided that the Store Issuer/Clerk who could not find place in the panel and are officiating on adhoc basis may be regularized with effect from the date they have completed three years from the date of their original selection i.e. on 21.09.1980 and as such while implementing the said decision the services of the applicant was regularized as Clerk in pay scale of Rs.260-400 with effect from 21.09.1983, whereas respondent no.3 Ram Kishan was selected for the post of Clerk in pay scale of Rs.260-400 on regular basis way back on 10.10.1979 and hence no claim of seniority over and above Ram Kishan can be entertained.

29. From a bare reading of Rule 18 D&AR, 1968, it is quite clear that the respondent department is required to provide several opportunities

to Class IV Railway servants who are holding adhoc posts to be able to qualify the Bench mark for further promotion to Class III. No evidence was provided by the respondents either during hearing or in the records placed in the file such opportunity had been provided to the applicant and other such employees like him. The arguments of the respondents is that the applicant cannot claim promotion at par with respondents no.4 & 5 since the applicant cannot be considered for promotion above these two senior SC staff.

30. In view of the fact that the applicant passed the requisite selection test for the post of Clerk and his promotion to the post of Clerk was taken as on regular basis and could not be said to be adhoc it would be correct to state that with the setting aside of the reversion order the applicant can claim to have been working uninterruptedly on the post. He is thus entitled to the protection emanating from the observations of this Tribunal at para 10 of the judgment passed in Budhi Ram & Ors. Vs. UOI, where the applicant was also a party. In the absence of the respondent department having provided the opportunities as required under Rule 18 D&AR Rules, 1968, it is clear that the claim of the applicant is maintainable.

31. In view of the analysis of the rules and the previous orders/judgments of this Tribunal and the Hon'ble High Court in this matter, we are of the opinion that the relief sought by the applicant is due to him and the OA is to be allowed. Accordingly, impugned orders dated 24.07.1997/05.08.1997, Annexure A1, order dated 12.09.1997, Annexure A2, passed by the 2nd respondent, rejecting the claim of the applicant and not allowing his due seniority / promotion at par with his

next junior are declared illegal and the respondents no.1 and 2 are directed to assign the seniority to the applicant above 3rd respondent and allow all consequential benefits including promotions at par with his junior with amount arrears of difference of pay, if any.

32. This is the classic case where the applicant has had to knock at the doors of the courts of justice repeatedly over almost two decades as though that is not bad enough the applicant was also made liable to pay an amount of Rs.35000/- vide the order dated 20.09.2011 of this Tribunal in OA No.152/1998. In this view of the matter and in the interest of justice, the O.A. is allowed and the respondents are directed to make a payment of Rs.50,000/- to the applicant. This exercise may be completed at the earliest and not beyond three months from the date of receipt of a certified copy of this order.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

//SV//